

JAN 23 2015

A BILL FOR AN ACT

RELATING TO PRIVACY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that since the adoption of
2 electronic medical records, medical identity theft is a
3 potential threat to public welfare. Victims of medical identity
4 theft are burdened with the responsibility of clearing their
5 personal medical records of fraudulent information. A victim
6 will suffer financial harm and may find their medical record
7 commingled with a thief's medical information including, but not
8 limited to blood type, test results, allergies, or illnesses.
9 Insurers and healthcare providers operating pursuant to the
10 Health Insurance Portability and Accountability Act of 1996
11 "HIPAA," the HITECH Act, and 18 U.S.C. §1347 Healthcare Fraud,
12 may mistakenly deny victims full access to their complete
13 medical records to protect identifying information of thieves.
14 The HIPAA Privacy Rule was updated April 14, 2003, granting a
15 victim of identity theft the right to request amendments to
16 medical records. Requests for medical record amendments are
17 subject to institutional fees for release. Without proper



1 correction to medical records, victims face a reduced ability to
2 secure health insurance on the individual market. An amendment
3 is necessary to provide unfettered access to records to the
4 victims of medical identity theft free of charge.

5 SECTION 2. Section 622-57, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§622-57 Availability of medical records.** (a) If a
8 patient of a health care provider as defined in section 671-1,
9 requests copies of the patient's medical records, the copies
10 shall be made available to the patient unless, in the opinion of
11 the health care provider, it would be detrimental to the health
12 of the patient to obtain the records. If the health care
13 provider is of the opinion that release of the records to the
14 patient would be detrimental to the health of the patient, the
15 health care provider shall advise the patient that copies of the
16 records will be made available to the patient's attorney upon
17 presentation of a proper authorization signed by the patient.

18 (b) If an attorney for a patient asks a health care
19 provider for copies of the patient's medical records and
20 presents a proper authorization from the patient for the release
21 of the information, complete and accurate copies of the records



1 shall be given to the attorney within a reasonable time not to
2 exceed ten working days.

3 (c) In the case of a deceased person, a personal
4 representative of the deceased person's estate may obtain copies
5 of or may authorize the health care provider to release copies
6 of the deceased person's medical records upon presentation of
7 proper documentation showing the personal representative's
8 authority.

9 If no personal representative has been appointed, the
10 deceased person's next of kin in order of superseding priority,
11 without court order, may obtain copies of or may authorize the
12 health care provider to release copies of the deceased person's
13 medical records, except as otherwise provided in this subsection
14 and subsections (d) and (e). A deceased person's next of kin
15 possesses superseding priority when all kin ranked higher in the
16 order listed in the definition of "deceased person's next of
17 kin" are deceased or incapacitated. When there are multiple
18 persons at the same level of superseding priority, all such
19 persons shall be entitled to request and obtain the records.
20 The person claiming to be next of kin of a deceased person and
21 requesting the deceased person's medical records shall submit to



1 the medical provider from whom the records are requested, an
2 affidavit attesting to status as next of kin with superseding
3 priority. The medical provider may rely upon the affidavit, and
4 in so doing, shall be immune to any claims relating to release
5 of the medical records.

6 (d) Notwithstanding applicable state confidentiality laws
7 governing the following types of specially protected health
8 information, a health care provider may honor, in whole or in
9 part, a request by the deceased person's next of kin for release
10 of medical records if the medical records of the deceased person
11 contain references pertaining to any of the following types of
12 specially protected health information:

- 13 (1) HIV infection, AIDS, or AIDS-related complex;
14 (2) Diagnosis or treatment of a mental illness; or
15 (3) Participation in a substance abuse treatment program.

16 (e) A health care provider shall refuse a request by the
17 deceased person's next of kin for release of medical records if
18 the deceased person had previously indicated to the medical
19 provider in writing that the person did not wish to have medical
20 records released to next of kin.



1 (f) Notwithstanding subsections (c) through (e), any
2 medical records of a deceased person may be produced pursuant to
3 a court order specifically compelling release.

4 (g) Reasonable costs incurred by a health care provider in
5 making copies of medical records shall be borne by the
6 requesting person.

7 (h) Patients or legal representatives of victims of
8 medical insurance fraud shall receive complete copies, free of
9 charge, of any and all records possessed by any health care
10 provider upon any determination of medical insurance fraud
11 within ten days of written request. Identifying information of
12 patients other than the victim of record shall not prevent a
13 victim from access to records.

14 (hi) For the purposes of this section:

15 "Deceased person's next of kin" means a person with the
16 following relationship to the deceased person:

- 17 (1) The spouse or reciprocal beneficiary;
- 18 (2) An adult child;
- 19 (3) Either parent;
- 20 (4) An adult sibling;
- 21 (5) A grandparent; and



1 (6) A guardian at the time of death.

2 "Personal representative" shall have the meaning provided
3 in section 560:1-201."

4 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

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S.B. NO.

0415

Report Title:

Relating to Privacy

Description:

Right of victims of medical identity related fraud to access medical records free of charge.

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